

## **EXHIBIT 6**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Adv.Pro.No.  
08-01789(BRL)

Debtor.

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Adv.Pro.No.  
09-01182(BRL)

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Adv.Pro.No.  
10-05342(BRL)

Plaintiff,

v.

MAXAM ABSOLUTE RETURN FUND, L.P.,  
et al.,

Defendants.

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Deposition of ROBERT ROSENKRANZ  
October 4, 2012

1 Q. Have you had any contact with Josh  
2 Nash since Mr. -- since Jack Nash's death?

3 A. No.

4 Q. Did you ever have any communications  
5 with Jack Nash regarding BLMIS?

6 A. No.

7 Q. Did you ever have any communications  
8 with Jack Nash regarding investments with  
9 Mr. Merkin?

10 A. No.

11 Q. Do you know a Howard Gottlieb?

12 A. Howard Gottlieb?

13 Q. Yes.

14 A. I don't believe so.

15 Q. Do you know a Daniel Gottlieb?

16 A. No.

17 Q. Going back to Acorn Partners, why did  
18 you found Acorn Partners?

19 A. I was interested in an investment  
20 vehicle for my own money that would be relatively  
21 low risk and uncorrelated with the stock market.

22 Q. What is Acorn Partners' investment  
23 strategy?

24 A. It's to identify a group of  
25 diversified hedge funds in a variety of strategies

1 higher the Sharpe Ratio, the better the relationship  
2 of rewards to risk.

3 Q. Do you know if others in the  
4 investment industry use Sharpe Ratio?

5 A. Yes. That's a standard technique.

6 Q. How long has that been a standard  
7 technique?

8 A. A long time.

9 Q. Since you started Acorn?

10 A. I don't know that long, but certainly  
11 the last 10 or 15 years.

12 Q. Are you familiar with the Sortino  
13 Ratio?

14 A. Yes.

15 Q. What's the Sortino Ratio?

16 A. I believe that looks more at upside  
17 and downside volatility separately.

18 Q. And do you use the Sortino Ratio in  
19 your evaluation of money managers?

20 A. Not especially.

21 Q. Why not?

22 A. I just don't think it -- I'm not sure  
23 that it gives that much relevant information.

24 Q. Do you do any other types of  
25 comparative analysis?

1           A.           Yeah, one of the things we focus on  
2           is manager size. Because I think one -- a lot of  
3           track records are established with relatively small  
4           assets under management, so you always have to be  
5           very sensitive to the idea that they can't be  
6           replicated as managers attract more assets.

7           Q.           Is that a scaleability issue?

8           A.           Yeah, that's another way of putting  
9           it.

10          Q.           You mentioned earlier you look at the  
11          volatility of a manager?

12          A.           Yes.

13          Q.           How do you do that?

14          A.           Well, there are volatility statistics  
15          that will -- that are incorporated into the  
16          calculation of the Sharpe Ratio, and so that's the  
17          way you would consider volatility.

18          Q.           Why is volatility important?

19          A.           Volatility is at least one measure of  
20          risk. It's one indication, if a manager has big ups  
21          and downs, it gives you a warning that he might be  
22          taking excessive risk. If you see a pattern of  
23          returns that has very low volatility, it implies  
24          that there's less risk. It's not the end of the  
25          inquiry but it's a sign that you're dealing with

1 somebody who is relatively low risk in his approach.

2 Q. Do you know Bernie Madoff?

3 A. I do not.

4 Q. Have you ever heard of Bernie Madoff?

5 A. I have.

6 Q. When did you first become familiar  
7 with the name Bernie Madoff?

8 A. He's been a known name in the  
9 financial world for at least a couple of decades.

10 Q. What do you recall about Mr. Madoff's  
11 reputation from when you first heard of Mr. Madoff?

12 A. Well, when I first heard of him, he  
13 was a market maker who would establish an  
14 over-the-counter trading business that did  
15 over-the-counter trading in New York Stock Exchange  
16 listed stocks, and he was a pioneer in that  
17 strategy, or that approach to business.

18 Q. Did there come a point in time that  
19 you learned additional information about Mr. Madoff?

20 A. Yeah, I was aware that he --  
21 subsequently, I became aware that he had -- was  
22 purported to have clients for whom they ran money.

23 Q. And when did you become aware of the  
24 fact that he had clients or that he purported to run  
25 money for?

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1 A. Oh, again, at least 20 years ago.

2 Q. Do you recall how you became familiar  
3 with that fact?

4 A. I mean, just anybody who was a  
5 professional investor in hedge funds would have  
6 heard of Madoff.

7 Q. What was your understanding of  
8 Mr. Madoff's reputation as a money manager?

9 A. At what point are we talking?

10 Q. When you first -- when you first  
11 learned of him.

12 A. I really hadn't focused much on him  
13 at the beginning.

14 Q. Was there a point in time when that  
15 changed?

16 A. Yeah.

17 Q. When was that?

18 A. I want to say sometime around 2002,  
19 2003. 2003, give or take. We were offered some  
20 capacity in -- to invest with Madoff. In the \$100  
21 million capacity, as I recall. And at that point I  
22 wanted to get serious about evaluating it.

23 Q. In this time frame, 2002 to 2003,  
24 what was your understanding of Mr. Madoff's  
25 reputation?

1           A.           There were a lot of sophisticated  
2 investors who thought he was very good, and I was  
3 aware that Jack Nash had invested with him and  
4 recommended him to others.

5           Q.           Did you have any conversations with  
6 Mr. Nash regarding your opportunity to invest with  
7 Mr. Madoff?

8           A.           No, I did not.

9           Q.           When did you know that Mr. Nash had  
10 invested with Mr. Madoff?

11          A.           I don't remember exactly. But prior  
12 to that time.

13          Q.           Do you know whether or not Mr. Nash  
14 ever withdrew his investments from Mr. Madoff?

15          A.           I do not know.

16          Q.           In 2002 to 2003 what was your  
17 understanding of Mr. Madoff's purported investment  
18 strategy?

19          A.           The strategy purported to be -- I  
20 think it was described as trading in options on  
21 stocks and hedging stocks versus options hedging  
22 options versus indices.

23          Q.           How did you come to this  
24 understanding?

25          A.           There was some descriptive



1 A. I would say from the time we first  
2 become aware of a manager to the time we pulled the  
3 trigger, it would probably be several months.

4 Q. How often does your investment  
5 strategy group meet?

6 A. Weekly, in general.

7 Q. Why do you perform all of these  
8 analyses as part of your due diligence?

9 MR. STEINER: Objection to form.

10 A. You perform them because you want to  
11 avoid any kind of risks that you haven't -- you want  
12 to be aware of all the types of risks that you might  
13 be assuming when you make an investment. These all  
14 go to risk mitigation.

15 Q. Do you have an obligation to conduct  
16 due diligence?

17 A. I certainly think you do.

18 Q. What's the basis for your belief?

19 A. I mean, that's what you're charging  
20 people money for. If you're managing their money  
21 and putting people's money into hedge funds, it's  
22 your basic obligation, is to allocate that money  
23 after reasonable diligence.

24 Q. Mr. Rosenkrantz, I want to go back to  
25 this opportunity that you had to invest with BLMIS

1 (Exhibit Rosenkrantz-4 marked for  
2 identification.)

3 Q. Mr. Rosenkrantz, the court reporter  
4 has handed you what's been marked as Rosenkrantz  
5 Exhibit 4. I apologize for the small font, but this  
6 is how it was produced to us. Let me know when  
7 you've had an opportunity to review it.

8 A. Yes.

9 Q. Do you recognize this document?

10 A. I do.

11 Q. What is it?

12 A. It is a letter that we send to our  
13 investors shortly after the Madoff fraud became  
14 known.

15 Q. Do you know who wrote this document?

16 A. I was the author of it, yes.

17 Q. And why did you send this to your  
18 investors?

19 A. I sent it to them really for two  
20 purposes. One, to -- because anybody who was  
21 investing in hedge funds at that time was concerned  
22 whether you had Madoff exposure; so I wanted to  
23 assure them that we did not. But also, I wanted  
24 them to kind of appreciate the quality of our due  
25 diligence process.

1 Q. We're going to take some time with  
2 this document.

3 A. Sure.

4 Q. I want to first focus your attention  
5 on the second paragraph that states: "We had  
6 considered investing in a Madoff managed account,  
7 and decided to pass for reasons that give a useful  
8 insight into our due diligence process."

9 Did I read that correctly?

10 A. Yes.

11 Q. What opportunity were you --  
12 withdrawn.

13 What were you referring to here when  
14 you said, "We had considered investing in a Madoff  
15 managed account"?

16 A. Well, the form in which people  
17 invested with Madoff was unlike the typical hedge  
18 fund. You had a managed account with his Madoff  
19 Securities, and he would just manage the assets in  
20 that account. And so that's what this refers to.

21 Q. Were you also referring to the 100  
22 million dollar opportunity in 2002-2003?

23 A. Yeah, that's what this refers to.

24 Q. Okay. And then the next paragraph  
25 says: "First, we ascertained that the description

1 of the strategy, purchase of large cap stocks versus  
2 sale of out of the money calls, appeared to be  
3 inconsistent with the pattern of returns in the  
4 track record, which showed no monthly losses."

5 Did I read that correctly?

6 A. You did.

7 Q. Is the description of the strategy  
8 referenced here the same as what you described  
9 earlier is your understanding of what Mr. Madoff's  
10 strategy was?

11 A. Yes, exactly -- essentially.

12 Q. What do you do to determine that the  
13 strategy was inconsistent with the returns?

14 MR. STEINER: Object to the form.

15 A. Well, it's just -- it's in the nature  
16 of any kind of option spreading strategy that there  
17 will be periods of time when you lose money in  
18 rapid -- you know, if the market has sharp up  
19 movements or sharp down movements, you should get a  
20 pattern of making money most of the time but losing  
21 money occasionally. You just weren't seeing that  
22 pattern here. So it made me wonder whether the  
23 description accurately reflected what he was doing.

24 Q. The next paragraph says: "Second, we  
25 persuaded a Madoff investor to share with us several

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months of his account statements with Madoff. These revealed a pattern of purchases at or close to daily lows and sales at or close to daily highs, which is virtually impossible to achieve. Moreover, the trading volumes reflected in the account, projected to reflect his account's share Madoff's purported assets under management at the time, were vastly in excess of actually reported trading volumes."

Did I read that correctly?

A. You did.

Q. Who is the investor that shared his account statements with you?

A. I'll answer that question, but I'd like that to be kept in confidence.

MR. BLOCKER: Brian, I'm going to designate your question and his answer as confidential pursuant to section 6 of the protective order, but if you want a clean record, you can ask it again but it will be under the confidentiality order.

MR. SONG: Sure.

[REDACTED]

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2 [REDACTED]

3 MR. BLOCKER: And just so the record  
4 is clear again, the last question and the answer I'm  
5 designating as confidential.

6 MR. SONG: May want to designate this  
7 portion confidential.

8 MR. BLOCKER: I'm going to designate  
9 every question that relates to this as confidential.

10 MR. STEINER: And I think the  
11 protective order procedure, maybe someone on that  
12 side of the table can correct me if I'm wrong, I  
13 think the protective order procedure provides that  
14 there's a period of time where the entire transcript  
15 is confidential.

16 MR. BLOCKER: I understand that.

17 MR. STEINER: And then you can --

18 MR. BLOCKER: I understand that. I'm  
19 just doing it now in an abundance of caution.

20 BY MR. SONG:

21 Q. What types of documents did [REDACTED]  
22 share with you?

23 A. He shared with us several months of  
24 account statements that included records of every  
25 transaction that took place during those months.

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2 Q. Did he share any trade confirmations  
3 with you?

4 A. Yes.

5 Q. Did he share any other documents with  
6 you?

7 A. Well, it was the monthly statement  
8 and trade confirmations.

9 Q. When did you first meet [REDACTED]?

10 A. [REDACTED]

11 Q. Do you know how [REDACTED] was  
12 invested with Mr. Madoff?

13 A. I believe he was invested personally.  
14 Strike that. I'm not sure.

15 Q. Do you know what [REDACTED]  
16 [REDACTED] is?

17 A. It's an affiliate of [REDACTED].

18 Q. Do you know who [REDACTED] is?

19 A. Yes.

20 Q. Who is [REDACTED]?

21 A. [REDACTED] [REDACTED]

22 Q. Do you recall how many months of  
23 statements and confirmations you received from  
24 [REDACTED]?

25 A. I think it was three or four.

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2 Q. Do you recall what the years were?

3 A. I don't, but I think they were quite  
4 recent statements. So if this was 2003, it would  
5 have been maybe 2003 statements.

6 Q. And after you received the account  
7 documents from [REDACTED], what did you do with them?

8 A. Well, it was a stack literally this  
9 high (indicating) for three months. And I --  
10 initially I was going to ask our accounting staff to  
11 kind of review them, but then I thought, let me just  
12 do something quick and dirty myself. So I picked 10  
13 or 12 confirmation slips out at random from this  
14 huge stack, and looked at those individual trades,  
15 and what I found was what I describe here, that the  
16 trades that reflected purchases were purchasing at  
17 or near the lows of the day; the trades that  
18 reflected sales were sales at or near the highs of  
19 the day. And that was extraordinarily -- I mean,  
20 there's just no way you can be systematically buying  
21 at lows and selling at highs, so that made me  
22 extremely suspicious.

23 Q. And how did you make the  
24 determination that they were purchasing or selling  
25 at low -- purchasing at the lows of the day and



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2 selling at the highs of the day?

3 A. You just look up Bloomberg trading  
4 for that day.

5 Q. Is that what you did?

6 A. Yes.

7 Q. Are you familiar with the term VWAP?

8 A. Yes.

9 Q. What is VWAP?

10 A. Volume weighted average price.

11 Q. What does volume weighted average  
12 price mean? What is it used for?

13 A. It's a measure of how well you've  
14 bought and sold stocks during the course of the day.  
15 So, there are prices at which the shares trade in  
16 the course of the day. There's a certain volume of  
17 shares traded at each of those prices. If you  
18 weight the prices by the volume, you would get  
19 volume weighted average price. And that's a -- it's  
20 a number that's used to, you know, if you're buying  
21 securities, you expect you're going to pay a little  
22 bit more than VWAP. If you're selling, you expect  
23 you're going to pay a little bit less, or receive a  
24 little bit less. But it's kind of used to measure  
25 the efficiency of your executions.

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2 Q. And did you compare [REDACTED]  
3 trading record against VWAP?

4 A. No.

5 Q. Do you have an opinion based on what  
6 you saw from trading confirms that you reviewed as  
7 to what [REDACTED] trading records would have been  
8 against VWAP?

9 MR. STEINER: Objection to form.

10 A. Well, sure. If you bought everything  
11 at the lows and you sold at the highs, you would  
12 have done much better than VWAP.

13 Q. Is that statistically possible?

14 MR. STEINER: Objection to form.

15 A. I mean, it's possible, it's possible  
16 you can buy a stock at the low and it's possible you  
17 can sell it at the high. But can you do that ten  
18 times in a row or a hundred times in a row? I mean,  
19 I don't think it's possible.

20 Q. Have you ever seen anybody  
21 consistently beat VWAP?

22 A. I think you might -- a professional  
23 trade -- I mean, there are trading strategies that  
24 could beat VWAP by a tiny amount consistently.

25 Q. Other than looking at the Bloomberg

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2 Terminal, did you do anything else to analyze

3 [REDACTED] account statements?

4 A. That's really all you needed to do.

5 Q. Do you know if Bloomberg Terminals  
6 are commonly used by investment professionals?

7 A. Yes, I believe they are.

8 Q. Do you know of a single reputable  
9 investment manager that doesn't have access to a  
10 Bloomberg Terminal?

11 MR. HAN: Objection.

12 MR. STEINER: Objection to form.

13 A. No. I think they're in universal  
14 use.

15 Q. You said in this paragraph that the  
16 trading volumes reflected in the account were vastly  
17 in excess of the actually reported trading volumes.  
18 Again, how did you make that determination?

19 A. Well, again the Bloomberg Terminal  
20 will tell you how many shares are traded in a day.  
21 So, as an example, let's say [REDACTED] confirmation  
22 showed that he purchased 5,000 shares of General  
23 Motors at 24 dollars and maybe that was very close  
24 to the low of the day, and maybe there was 5,000  
25 shares traded that day, at that price, or ten

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thousand, let's say. But, [REDACTED] is 20 million -- this was a 20 million dollar account at a time when somebody -- when Madoff was purportedly running 20 billion. So, yeah, the account statements I saw showed prices and volumes that were consistent with what was on Bloomberg, but you couldn't multiply it by a thousand.

Q. What was the basis for your belief that Mr. Madoff was managing \$20 billion?

A. That was sort of the, sort of general common knowledge in the industry.

Q. Is that information that you received from or during this opportunity to invest with Mr. Madoff?

A. I would have known that before.

Q. Did you come to any other conclusions as a result of your review from [REDACTED] statements and confirms?

MR. STEINER: Object to the form.

A. Well, it made me very -- I mean, it just didn't seem -- those statements just didn't seem credible. I couldn't fathom what -- how it was possible or, frankly, it seemed to me like it was -- the conclusion I came to was that this was very

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2 likely to just be an operation that was printing  
3 confirmation slips, as opposed to reflecting actual  
4 real world trades.

5 Q. Did you also review the options  
6 trading volume in [REDACTED] statements?

7 A. I don't recall whether I did that.

8 Q. And how long did you spend reviewing  
9 [REDACTED] account statements and confirms?

10 A. Took no more than a couple of hours.

11 Q. The fifth paragraph in your email  
12 says: "Third, we noted that Madoff operated through  
13 managed accounts, rather than by setting up a hedge  
14 fund of his own. That was suspicious inasmuch as  
15 hedge fund fees are typically much higher than the  
16 brokerage commissions Madoff was meant to be  
17 charging. We suspected the requirements for annual  
18 hedge fund audits was the reason he wanted to avoid  
19 that approach. We knew that when his clients are  
20 audited, their auditors simply look at the account  
21 statements and transaction reports generated by the  
22 brokerage firm. They don't investigate the books of  
23 the brokerage firm itself."

24 Did I read that correctly?

25 A. You did.

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2 Q. How did you note that Mr. Madoff  
3 operated through managed accounts?

4 A. Again, that was common knowledge.

5 Q. And why -- what is the basis for your  
6 belief that setting up his own hedge fund would have  
7 been more favorable?

8 MR. STEINER: Objection to form.

9 A. Well, hedge fund fees at that point  
10 were typically two percent of assets under  
11 management, plus 20 percent of profits, which is a  
12 much bigger, much larger amount of money than what a  
13 market maker could make, or at least I thought it  
14 would be.

15 Q. And how did you know what  
16 Mr. Madoff's compensation would be?

17 A. I didn't know for sure. It was just  
18 kind of an educated guess.

19 Q. Do you know whether or not Mr. Madoff  
20 charged an investment advisory fee?

21 A. We never got so far as to really see  
22 what the advisor relationship would have been with  
23 them.

24 Q. Is there anything else regarding  
25 Mr. Madoff's compensation arrangement that struck

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2 you as suspicious?

3 MR. STEINER: Objection to the form.

4 MR. HAN: Objection.

5 A. Well, it wasn't so much the  
6 compensation arrangement that was suspicious. It  
7 was just the form. I mean, why would you want to  
8 have hundreds of separate managed accounts to worry  
9 about, when you could roll everything into one, have  
10 a single hedge fund and probably make a lot more  
11 money with a lot less administrative hassle. It was  
12 pretty unusual for people to even want to do managed  
13 accounts, no less somebody running a large -- that  
14 kind of money that successfully.

15 Q. Do you know how many -- at the time  
16 in 2003, did you know how many managed accounts  
17 Mr. Madoff purportedly had?

18 A. No, but I mean, if you took -- I  
19 mean, [REDACTED] account was around 20 million,  
20 and that had to be, I would have imagined that that  
21 was bigger than average. So that would imply more  
22 than a thousand.

23 Q. Did you have any conversations with  
24 [REDACTED] about the number of managed accounts at  
25 BLMIS?

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2 A. No.

3 Q. Did you have any conversations with  
4 [REDACTED] regarding other investors in BLMIS?

5 A. I don't recall, no.

6 Q. Can you explain to me what you meant  
7 when you said, "We suspected the requirement for  
8 annual hedge fund audits was the reason he wanted to  
9 avoid that approach"?

10 A. Yeah. I mean, if you -- if you have  
11 a hedge fund, your auditor is going to want to see  
12 that you have all of the securities that you -- you  
13 know, your books will reflect certain security  
14 positions, and the way the auditor will try to  
15 confirm that you actually have those security  
16 positions is by asking your broker. So if you have  
17 a brokerage account with Goldman Sachs, they'll say,  
18 Goldman, do you have -- the client says he has XYZ,  
19 can you confirm that, and Goldman will confirm it  
20 and that's the end of the inquiry. They'd never  
21 think to go beyond that to look at Goldman's books.

22 So, similarly, if you're running a  
23 managed account, let's say we had opened a managed  
24 account, our auditors looked at the performance of  
25 that managed account, they'd ask Madoff Securities,



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2 do you -- can you confirm these balances? And of  
3 course Madoff Securities would say, yeah. But our  
4 auditors wouldn't go beyond the Madoff Securities --  
5 they wouldn't try to audit Madoff Securities, just  
6 as they wouldn't audit Goldman Sachs, if you had an  
7 account with Goldman Sachs. So it kind of stopped  
8 the inquiry at the level of Madoff Securities. It  
9 wouldn't go beyond that.

10 Q. When did you reach -- when did you  
11 reach this conclusion regarding the auditors?

12 MR. STEINER: Objection to the form.

13 A. And I don't quite understand the  
14 question.

15 Q. Sure. Let me rephrase.  
16 Did you come to this conclusion in  
17 2002?

18 MR. STEINER: Objection to form.

19 A. This conclusion meaning the  
20 suspicion.

21 Q. Your suspicion regarding the  
22 annual -- the requirement for annual hedge fund  
23 audits.

24 A. Well, it was -- yes, it was a  
25 suspicion that I came to at the time as opposed to a

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2 conclusion, but, yes, it was all part and parcel of  
3 the -- of our due diligence on Madoff.

4 Q. The next paragraph in the email says:  
5 "Fourth, although brokerage firms are required to  
6 provide annual audit reports, the investor appeared  
7 not to have any --" I'm sorry, "not to have received  
8 any. With considerable perseverance, we obtained  
9 audit reports filed with the SEC which were prepared  
10 by an utterly obscure accounting firm located in  
11 Rockland County, New York."

12 Did I read that correctly?

13 A. You did.

14 Q. You stated that brokerage firms are  
15 required to provide annual audit reports. Why did  
16 you expect [REDACTED] to have a copy of the annual  
17 audit report?

18 A. Because as a client of that brokerage  
19 firm he should have received one in the ordinary  
20 course, and would have filed it. Again, just  
21 ordinary course of business.

22 Q. And how did you obtain the audit  
23 reports?

24 A. We had a law firm actually get it for  
25 us from the SEC. I'm not exactly sure how they did

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2 it, but it was an SEC filing and they were able to  
3 obtain it.

4 Q. Do you know if these reports are also  
5 referred to as focus reports?

6 A. I don't think it's the same thing.

7 Q. Did you know that Mr. Madoff's  
8 auditor was called Friehling & Horowitz?

9 A. I mean, I don't remember the specific  
10 name of the firm, but it was a firm that struck me  
11 as very obscure.

12 Q. When did you discover the identity of  
13 Mr. Madoff's --

14 A. When I got the audit report.

15 Q. And what did you do -- how did you  
16 discover it? How did you discover that it was an  
17 obscure accounting firm located in Rockland County,  
18 New York?

19 MR. STEINER: Object to the form.

20 A. It would have said on the report,  
21 this is a report -- standard audit report says the  
22 name of the auditor that prepared it, and in this  
23 case it was a firm that I had never heard of that  
24 had an address in some shopping mall in Rockland  
25 County.

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2 Q. Did you try to contact the firm?

3 A. No.

4 Q. Were you aware that the firm was a  
5 three-person accounting firm?

6 A. I was aware that it was a very small  
7 firm. I didn't know the exact size.

8 Q. Why were you surprised that a small  
9 firm was auditing Mr. Madoff?

10 A. It would just be an unusual choice  
11 for a pretty substantial business to pick a firm  
12 that's that small. I mean, almost any other company  
13 I've ever looked at in the investment world is using  
14 one of maybe seven or eight firms. The Big Five or  
15 Big Eight, it's gotten smaller and smaller, but  
16 there's a relatively small handful of firms that 99  
17 percent of investment operations rely on, and this  
18 was certainly not one of them.

19 Q. The next paragraph in the email says:  
20 "Fifth, we reviewed the audit report itself which  
21 showed no evidence of customer activity whatsoever,  
22 neither accounts payables to or accounts receivable  
23 from customers. They appeared to be the reports of  
24 a market maker, not of a firm that at the time was  
25 meant to have some 20 billion dollars of customer

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2 accounts."

3 Did I read that correctly?

4 A. You did.

5 Q. What did you expect to see in the  
6 customer -- for customer activity in the audit  
7 report that you reviewed?

8 MR. STEINER: Object to the form.

9 A. Well, this is just -- the face of an  
10 audited statement of an investment firm, if you're  
11 trading on behalf of clients, if you have clients  
12 you have amounts receivable from your clients for  
13 securities they purchased, you have amounts payable  
14 to your clients for securities they sold. You're  
15 always going to see items on the balance sheet of  
16 due to clients, due from clients. It's just a  
17 standard item you would expect to see on any -- on  
18 the audited report of any firm that had clients.  
19 And the fact that there were absolutely none here  
20 was just shocking. I mean it, to me, was -- I mean,  
21 I was highly suspicious before that, but if you had  
22 numbers of any kind on the statement, you wouldn't  
23 know whether those numbers were accurate or not.  
24 But seeing that there was no evidence whatsoever of  
25 customer activity, that to me made it just

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2 extraordinarily highly likely that there was -- that  
3 my first surmise, which is that all of these  
4 confirmation slips and account statements were just  
5 the product of a printing process as opposed to real  
6 transactions on the books of a firm, was sort of  
7 proven or proven to at least a high probability by  
8 looking at this and seeing that there simply was no  
9 evidence of customer activity.

10 Q. Do you recall when you reviewed the  
11 audited financials in relation to your review of  
12 [REDACTED] statements and confirms?

13 A. Yeah. It took a couple of months.  
14 It took a lot of perseverance to get these  
15 statements and I think it was a three or four-month  
16 process, perhaps.

17 Q. Are you aware that Mr. Madoff was  
18 supposedly liquidating his positions and moving to a  
19 money market at the end of every quarter?

20 MR. HAN: Objection.

21 A. No.

22 Q. If this was in fact the case, that he  
23 was moving into a money market at the end of every  
24 quarter, would that explain why there was no  
25 customer activity?

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2 MR. HAN: Objection.

3 MR. STEINER: Objection to form.

4 A. I don't think it would have.

5 Q. Does the fact that Mr. Madoff  
6 supposedly went to cash or went to a money market at  
7 the end of a quarter raise any other concerns for  
8 you?

9 MR. STEINER: Objection to form.

10 A. Well, I wasn't aware of -- I wasn't  
11 aware of that, actually. Can't really comment on  
12 it.

13 Q. So the five items, the five  
14 paragraphs that are listed in your email that we  
15 just went over, did you reach these -- did you come  
16 to these opinions in connection with your due  
17 diligence in 2003?

18 A. Yes.

19 Q. The last paragraph of this email  
20 says: "Taken together, these were not merely  
21 warning lights but a smoking gun, and the only  
22 plausible explanation we can conceive was that the  
23 account statements and trade confirmations were not  
24 bona fide, but were generated as part of some sort  
25 of fraudulent or improper activity."

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2 Did I read that correctly?

3 A. You did.

4 Q. And did you reach this conclusion in  
5 2003?

6 MR. STEINER: Object to the form.

7 A. Yes. I believe it was 2003, but yes.

8 Q. At the time of your investment  
9 opportunity with Mr. Madoff?

10 A. Yes.

11 Q. Did you ever ask to conduct a site  
12 visit at BLMIS?

13 A. No.

14 Q. How long after you completed your due  
15 diligence review that you described did it take you  
16 to make a decision as to whether or not to invest?

17 A. Well, we were -- I mean, I had pretty  
18 much decided not to invest right at point 1 where I  
19 thought that the track record was inconsistent with  
20 the description, but the track record was so  
21 alluring, I mean, he was making, at least the  
22 statements seemed to suggest, around one percent a  
23 month returns for years and years without a down  
24 month and I thought it was at least possible that he  
25 was doing something that was really brilliant that



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2 the market hadn't figured out, that the returns were  
3 legitimate, and I wanted to see if I could figure  
4 out what he was doing. Which is why I pursued it.  
5 But I mean, I had skepticism right from the  
6 beginning, but I thought maybe there's -- maybe he's  
7 giving kind of a misleading description in order to  
8 protect something brilliant and proprietary. So  
9 that was my sort of first thought. And I was trying  
10 to see what that brilliant proprietary thing was,  
11 and then came to the conclusion that in fact it was  
12 fraudulent.

13 Q. You earlier described your due  
14 diligence process for Acorn's other investments.  
15 Why didn't you implement those types of due  
16 diligence techniques when evaluating Mr. Madoff?

17 MR. STEINER: Objection to the form.

18 A. I'd appreciate more specificity.  
19 What do you mean?

20 Q. Sure. You were talking about  
21 earlier, for example having Ms. Fleming's group  
22 conduct operational due diligence. Why didn't you  
23 have a similar due diligence process when evaluating  
24 Mr. Madoff's?

25 A. Well, if I recall correctly, Dick had

Robert Rosenkranz

10/4/12

Picard v. Merkin/Maxam

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1 A. I don't believe so.

2 MR. HAN: Thank you, Mr. Rosenkranz.

3 That's all I have.

4 THE WITNESS: Okay.

5 THE VIDEOGRAPHER: Going off the  
6 record, the time is 1:31.

7 (Deposition concluded 1:31 p.m.)

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